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9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,) No. CR 05-00452 WDB SBA
14 Plaintiff,) [PROPOSED] ORDER AND
15 v.) STIPULATION REQUESTING COURT'S
16 GREGORY P. MOELLER,) DETERMINATION WHETHER 18 U.S.C.
17 Defendant.) § 1018 MAY APPLY TO THE FACTS OF
THE PRESENT CASE

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19 On September 30, 2005, Defendant Gregory P. Moeller submitted a memorandum of points
20 and authorities in support of the application of 18 U.S.C. § 1018 to the parties' plea agreement.
21 With the agreement of the parties, and with the consent of the Defendant, the Court enters this
22 order, agreeing to determine whether 18 U.S.C. § 1018 may apply to the facts of the instant case,
23 on the Defendant's brief and without the parties' appearances. The parties agree, and the Court
24 finds and holds, as follows:

25 1. The parties appeared before the Court on August 12, 2005 for Defendant's initial
26 appearance and arraignment, with the intent that Defendant would plead guilty that day to one
27 count of a violation of 18 U.S.C. Section 1018 ("Section 1018"). The Court, however, rejected
28 the parties' plea agreement, and put the matter off calendar indefinitely, to allow the parties to
resolve whether the Defendant, in fact, falls within the category of persons who may be liable

1 under Section 1018.

2 2. After conducting additional legal research, the parties still agreed that Section 1018
3 applied and that resolution by misdemeanor plea under Section 1018 was still appropriate.

4 Consequently, on September 30, 2005, the Defendant submitted a memorandum of points and
5 authorities in support of the application of Section 1018 to the parties' plea agreement, with the
6 hope that the prosecution could be resolved by misdemeanor plea under Section 1018 at the next
7 hearing.

8 3. Counsel for the defense believes it is in his client's best interest to have the Court
9 determine whether Section 1018 may apply, based solely on Defendant's memorandum of points
10 and authorities and without the parties' appearances. Defendant wishes to avoid incurring the
11 cost of having defense counsel make a court appearance, only to have the Court reject the parties'
12 pleas agreement on the same grounds. Such costs would be unduly burdensome to the
13 Defendant, who is already financially constrained.

14 4. The parties are currently scheduled for status hearing on October 18, 2005, at 10:00
15 a.m. before the Honorable Wayne D. Brazil. Should the Court not render any opinion on
16 Defendant's memorandum of points and authorities by October 14, 2005, the parties will request
17 that the October 18, 2005, hearing be taken off calendar and continued.

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19 IT IS SO STIPULATED.

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21 DATED: _____

GREGORY P. MOELLER
Defendant

22

23 DATED: 9/30/05


CANDICE JAN
Special Assistant United States Attorney

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25 DATED: _____

BRADY MCCLEOD
Attorney for GREGORY P. MOELLER

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THE MILES LAW FIRM

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9 determine whether Section 1018 may apply, based solely on Defendant's memorandum of points
10 and authorities and without the parties' appearance. Defendant wishes to avoid incurring the
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21 DATED: 9/30/05


GREGORY P. MOELLER
Defendant

22
23 DATED: 9/30/05


CARTER C. DAN
Special Assistant United States Attorney

BRADY MCLEOD
Attorney for GREGORY P. MOELLER

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25 DATED: 9/30/05

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27 DATED: 9/30/05

1 IT IS SO ORDERED.
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3 DATED: October 3, 2005
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